

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1696 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KALUBHAI SONUBHAI VADHU

Versus

STATE OF GUJARAT

Appearance:

MR MANOJ N POPAT for the Petitioner

MR NIGAM SHUKLA for the Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 07/08/96

ORAL JUDGEMENT

1. Heard learned counsel for the parties. The petitioner, a Panchayat Secretary in the Revenue Department of Government of Gujarat, filed this Special Civil Application in which the challenge has been made to the orders dated 5-8-1982 and 20-1-1983. The order dated 5-8-1982 as mentioned in the prayer has been filed by the petitioner at annexure 'E'. In the index, date of this order has been given to be 2-8-1982. In the type copy of

the said order, the date is mentioned as /7/82 /3-8-82. So annexure 'E' has been given three different dates. 2-8-1982 in the index, 5-8-1982 in the prayer clause and 3-8-1982 in the order. How casually the counsel for the petitioner has taken the pleadings of the party. He has not undertaken any trouble to make necessary correction in the petition before presenting the same in the Court. Be that as it may. Under the order annexure 'E' dated 3-8-1982, after holding the departmental inquiry, the petitioner was ordered to be dismissed from the services. This order has been passed by the Dy. District Development Officer of District Panchayat, Valsad. The petitioner filed appeal before District Development Officer, Bulsar but the said appeal was dismissed by the appellate authority under its order dated 20th January, 1983. A copy of this order has been produced to this writ petition at annexure 'F'.

2. The only contention made by the learned counsel for the petitioner is that the penalty of dismissal is highly excessive taking into consideration the misconduct alleged and found proved against the petitioner. I do not find any substance in this contention. The petitioner was chargesheeted for misappropriating the amount of the Panchayat, and as such, no lenient view could have been taken in such a serious matter. The charge of the misappropriation of the amount of the Panchayat is a grave and serious charge and on proof of the same, the minimum penalty should have been of dismissal, and as such, both the authorities have rightly given the penalty in the present case to the petitioner which does not call for interference of this Court. The counsel for the petitioner does not dispute that the petitioner has made the misappropriation of the amount of the Panchayat, but only explanation given is that the petitioner was in need of the money as his wife was seriously ill. Such a defence can be taken at any time and no reliance can be placed thereon. Otherwise also if it is accepted that his wife was ill and the petitioner was in need of money, then this action of the misappropriation of the amount of the Panchayat cannot be justified. It cannot be said to be mitigating circumstances to take the lenient view in the matter of giving the penalty to the petitioner. The counsel for the petitioner has admitted that on charge of misappropriation, a criminal case has also been filed against him in which he was convicted but he was given the benefit of the provisions of the Probation of Offenders Act. In criminal case also, the petitioner was held to be guilty of misappropriation of the amount. In the matter of giving the penalty to the delinquent on

proved misconduct, this Court has very limited power of judicial review. The disciplinary authority and the appellate authority are the best judges to decide what appropriate penalty should be given to the delinquent for a proved misconduct, and in case, they decides that it is a case where the charge of the misappropriation is proved against the petitioner and penalty of dismissing him from the services is given then it cannot be said to be a case of any harsh or excessive penalty. This court can interfere in the penalty given to the delinquent where that is found to be shocking to the judicial conscience of the court, which is not a case here. There is no merit in this Special Civil Application. No other point has been canvassed.

3. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged.

zgs/-